

OPINION
50-11

May 3, 1950 (OPINION)

BIDS AND BIDDERS

RE: Certified Check

Your letter of April 28 addressed to the Attorney General has come to my desk for attention.

You state that the Board of Administration advertised for bids for a certain project and the bids were opened April 12, 1950. The low bidder did not enclose a certified check, but instead only a plain check. When this was discovered this bidder furnished a bank draft and about two weeks later furnished a certified check.

You inquire whether the failure of the low bidder to submit the certified check as provided by Section 48-0204 of the North Dakota Century Code constitutes an irregularity which the Board could waive or may the Board under the facts stated reject this bid for failure of the bidder to comply with the statutory requirements.

Subdivision 4 of section 48-0204 provides specifically that a certified check on some solvent bank within the State of North Dakota for not less than five percent of the amount of the bid shall accompany the same as a guarantee that the bidder will enter into the contract if his bid is accepted.

Since the language is mandatory a bidder may not substitute a different form of guaranty than that provided by statute. As you will observe, the statute provides specifically that a certified check shall accompany the bid. Failure to comply with the statute in this respect is not an irregularity that may be waived by the Board of Administration.

Our suggestion would be that all bids be rejected and that you readvertise for bids although this would be within the discretion of the Board.

WALLACE E. WARNER,

Attorney General